IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 5688 of 2007(B)

SA.30/2006 of DEBT RECOVERY TRIBUNAL, ERNAKULAM
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PETITIONER:

DOLLY ISSAC, D/O. K.M.JOSEPH,
RESIDING AT T.C.1321/63, MULAVANA JUNCTION,
THIRUVANANTHAPURAM.

BY ADV. SRI.V.AJAKUMAR,
SRI.T.M.CHANDRAN.

RESPONDENTS:
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1. **M/S. INDIA OVERSEAS BANK,**
   KURAVANKONAM BRANCH, KURAVANKONAM P.O.
   THIRUVANANTHAPURAM, REPRESENTED BY ITS
   BRANCH MANAGER.

2. **THE AUTHORISED OFFICER,**
   M/S. INDIAN OVERSEAS BANK, KURAVANKONAM P.O.,
   THIRUVANANTHAPURAM.

3. **THE RECOVERY OFFICER,**
   M/S. INDIAN OVERSEAS BANK, KURAVANKONAM P.O.,
   THIRUVANANTHAPURAM.

BY ADV. SRI.P.B.SURESH KUMAR, SC,I.O.BANK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/02/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

WP(C).No.5688 of 2007-B

Dated this the 26th day of February, 2007.

JUDGMENT

The petitioner's husband is in default to the first respondent bank, in relation to a loan availed of by him. While taking action under Section 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Act, 2006 against the property offered by her husband as security, the petitioner alleges, the Officer has trespassed into her property and caused damage and has locked her gate using a new lock and key. The petitioner submits, she has nothing to do with the loan transaction. Her property has not been given as security also. Feeling aggrieved by the above actions, the petitioner filed application under Section 17(1) of the Securitisation Act. The Debts Recovery Tribunal dismissed the application holding that the petitioner's remedy is to move the competent court for appropriate reliefs. This writ petition is filed challenging the said order, Ext.P5. According to the petitioner, there is an absolute bar under Section 34 of the Securitisation Act against moving the civil court. So, the decision of the D.R.T. is unsustainable in law.

2. I heard the learned Standing Counsel for the first respondent bank. The counsel would submit that the petitioner has got a right of

appeal against Ext.P5. He would fairly concede that going by the allegations of the petitioner, the action of the bank is not under the provisions of the Securitisation Act and therefore the bar under Section 34 will not apply.

3. Going by the grievances of the petitioner highlighted, there cannot be any ground that the alleged actions of the bank are not covered by the provisions of the Securitisation Act. Therefore, the bar under Section 34 of the Act against filing civil suit will not apply. Accordingly, the challenge against Ext.P5 is repelled. The petitioner will be free to approach the competent civil court for appropriate reliefs. Subject to that right, this Writ Petition is dismissed.

K.BALAKRISHNAN NAIR,
JUDGE.

MS